

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-220625 **DATE:** December 13, 1985
MATTER OF: Mark Dunning Industries, Inc.

DIGEST:

1. Where the contracting activity never received the protester's offer, and there is no evidence even to establish that an offer actually was sent, a copy submitted after the proposal due date cannot be considered for award.
2. Solicitation listing incorrect offer submission address need not be canceled where adequate competition results, reasonable prices are received, and there is no evidence of a deliberate attempt to exclude protester from the competition.

Mark Dunning Industries, Inc. (Dunning), protests award of a contract to another firm under Department of the Army request for proposals (RFP) No. DAHA01-85-R-5006 for mess attendant services at Dannelly Field in Montgomery, Alabama. Dunning claims that the listing in the solicitation of the wrong address for offer submission led to the loss of its offer, and seeks either award of the contract based on a subsequently-submitted proposal, or a resolicitation. We deny the protest.

The solicitation was issued on August 27, 1985, and set September 27 as the date offers were due. The address to which mailed offers were to be sent was listed as:

187 TAC Fighter Group
Contracting Office, Dannelly Field (ANG)
P.O. Box 1584
Montgomery AL 36196-0001

Dunning asserts, and the contracting officer concedes, that the address included an incorrect post office box number. The proper post office box number was 2584. Dunning claims it sent a proposal to the address provided in the solicitation, on September 23, by certified mail. No proposal from Dunning ever was received in the Dannelly

034061

Field contracting office, however. Dunning states that it has asked the U.S. Postal Service to locate the letter, and that this tracing could take up to 3 months' time. Dunning has submitted to our Office along with its bid protest a copy of what it says was its proposal; that proposal is lower in cost than the lowest offer actually received.

We agree with the Army that the copy of Dunning's offer cannot be entered into the competition.

Dunning has not established that it in fact sent a proposal in response to the solicitation. The only evidence the firm has submitted in that respect is a copy of a certified mail receipt bearing the handwritten date of September 23 (4 days before the closing date) and with the contracting activity's address written on it. The space designated for a postmark is blank, however, and absent a postmark there is no basis to conclude that the document involved was mailed. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.215-10 (1984) (postmark on the wrapper or on a certified mail receipt is the only acceptable evidence to establish the date a late proposal was mailed).

Moreover, the fact that the government may have contributed to the alleged loss of the offer--through the RFP listing of the wrong post office box number--does not justify consideration of the substitute. See Magnetic Specialty, Inc., B-213512, Nov. 18, 1983, 83-2 C.P.D. ¶ 594; Commercial Envelope Mfg. Co., Inc., B-183010, July 17, 1975, 75-2 C.P.D. ¶ 44 (both formally advertised situations). There simply can be no certainty here that the copy presented with the protest is identical to the offer allegedly submitted and lost, as opposed to being merely a late offer. As a late offer, the copy could not be accepted under either the regulations that govern the consideration of mailed proposals received after the closing date for receipt, see FAR, 48 C.F.R. § 52.215-10, or the rules that apply to late hand-delivered offers. See National Minority Research Development Corp., B-220057, Sept. 18, 1985, 85-2 C.P.D. ¶ 303.


Accordingly the resubmitted offer may not be considered. Dunning's request for award of the contract is denied.

Dunning also requests, in the alternative, resolicitation due to the error in the RFP. In our view,

however, where there is adequate competition, reasonable prices are received, and there is no evidence of a deliberate attempt to exclude the protester from the competition, there is no need to readvertise a procurement because of a solicitation error like this one. See Prestex, Inc., et al. B-205478, et al., Feb. 17, 1982, 82-1 C.P.D. ¶ 140.

In the present case, the Army received four proposals in response to the solicitation; price is to be the determinative evaluation factor; and the agency plans to accept the lowest offer. The government thus received adequate competition, and there is nothing in the record to suggest that reasonable prices were not obtained. Furthermore, Dunning does not allege, and the record does not indicate, that intent to exclude Dunning from the competition had anything to do with the incorrect mailing address in the RFP. We therefore do not think a resolicitation is warranted.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel